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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,623	10/14/2003	Christopher Niezrecki	5853-319	3764
30448	7590	02/10/2004	EXAMINER	
AKERMAN SENTERFITT P.O. BOX 3188 WEST PALM BEACH, FL 33402-3188			LOBO, IAN J	
		ART UNIT	PAPER NUMBER	
		3662		

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/684,623	NIEZRECKI ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Ian J. Lobo	3662

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4, 6-17 and 19-25 is/are rejected.
- 7) Claim(s) 5 and 18 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____ .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by the patent to Menezes ('468).

With respect to claim 1, see Menezes, Fig. 3 and col. 8, line 25- col. 9, line 8 where a system for identifying a presence of a creature disposed in water is disclosed. The system includes a transducer (68) and a signal processor (72). Claim 1 is so anticipated.

With respect to method claim 15, Menezes discloses (see the title, for example) a method for identifying a presence of a creature disposed in water that anticipates the breath of the instant claim.

3. Claims 1-4, 9-13, 15 and 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by the patent to Hall et al ('849).

With respect to claim 1, see Hall et al, Fig. 7 where a system for identifying a presence of a creature disposed in water is disclosed. The system includes a transducer (22) and a signal processor (67). Claim 1 is so anticipated.

With respect to claim 2, col. 1 suggests that the sensors are mounted to an ocean-going vessel.

With respect to claims 3 and 4, see Fig. 7.

With respect to claim 9, see col. 8, lines 8+.

With respect to claims 10-13, see col. 8, lines 41-57.

With respect to method claim 15, Hall et al discloses a method for identifying a presence of a creature disposed in water that anticipates the breath of the instant claim.

With respect to claim 22, the specific acoustic sounds detected in Hall et al read upon the step claimed.

With respect to claims 23-25, see col. 8, lines 41-57.

4. Claims 1-4, 6-13, 15-17 and 19-25 are rejected under 35 U.S.C. 102(b) as being anticipated by the patent to Parra ('473).

With respect to claim 1, see Parra, Fig. 4 and col. 6, lines 16-68 and col. 8, line 43 – col. 9, line 24, where a system for identifying a presence of a creature disposed in water is disclosed. The system includes a transducer (40) and a signal processor (52). Claim 1 is so anticipated.

With respect to claims 2 and 13, see col. 3, line 24, wherein a boat is disclosed.

With respect to claims 3 and 4, see Fig. 4 and piezo-sounder (30).

With respect to claims 6 and 7, see counter (44).

With respect to claim 8, see col. 5, lines 64-68.

With respect to claim 9, the bio-sounds detected by the transducer (40) reads upon the language of the instant claim (for example, see col. 9, lines 10-15).

With respect to claims 10-12, see col. 5, line 65 – col. 6, line 25.

With respect to method claim 15, Parra discloses (see the title, for example) a method for identifying a presence of a creature disposed in water that anticipates the breath of the instant claim.

Claims 16 and 17 are anticipated by the communicating of a warning signal by a piezo-sounder (30).

With respect to claims 19 and 20, see the steps involving counter (44).

With respect to claim 21, see col. 8, line 66 – col. 9, line 15.

With respect to claim 22, the bio-sounds read upon the step claimed.

With respect to claims 23-25, see col. 5, line 65 – col. 6, line 25.

5. Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by the patent to Simpson ('163).

See Figures 5A and 5B for a buoy embodiment that includes a system for identifying the presence of a creature disposed in water.

6. Claim 14 is rejected under 35 U.S.C. 102(e) as being anticipated by the PG publication to Sargent ('514).

See paragraph (0009) of Sargent.

***Allowable Subject Matter***

7. Claims 5 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ian J. Lobo whose telephone number is (703) 306-4161. The examiner can normally be reached on Monday - Friday, 6:30 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas H. Tarcza can be reached on (703) 306-4171. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Primary Examiner  
Art Unit 3662

ijl